SUPREME COURT, U. S.

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In The

Supreme Court of the United States

October Term, 1967

No. 639

MRS. MINNIE BRADE GLONA,

Petitioner,

versus

AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY, ET. AL.,

Respondents.

Petition For A Writ of Certiorari To
The United States Court of Appeals
For the Fifth Circuit

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The following brief is submitted by respondents, American Guarantee and Liability Insurance Company and Henry O. MacDonnell, in opposition to the application for writ of certiorari filed by petitioner, Mrs. Minnie Brade Glona.

ARGUMENT

As admitted by petitioner, the Louisiana courts, in interpreting the Louisiana Wrongful Death Statute, Article 2315 of the Louisiana Civil Code, have consistently held that no cause of action exists for the death of illegitimates. Thus, the only question before the Court is whether or not a classification into legitimates and illegitimates rests upon a reasonable basis or is purely arbitrary and capricious, as contended by petitioner.

At the outset, we deem it advisable to dispose of petitioner's argument that this classification has been made only by the courts rather than by the legislature. Since the first enactment of the Wrongful Death Statute in 1870 the Legislature has amended Article 2315 on six different occasions, the last amendment having been made in 1960. However, although the courts have held for over sixty years[1] that Article 2315 does not provide recovery for the death of an illegitimate child, no amendment has been made with reference thereto, thus indicating that the courts have fully complied with the legislative intent of the statute.

Petitioner's contention that the "real reason of Louisiana [for denying recovery for the death of illegitimates] is simply pure prejudice," is not supported either in law or in fact, and is particularly inappropriate when applied to this petitioner. Under

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[1]The first case so holding was Lynch v. Knoop, 118 La. 611, 43 So. 252, decided in 1907.

Louisiana law, the mother of an illegitimate child, has it in her power to confer legitimate status upon her child through legitimation under Article 200 of the Louisiana Civil Code, or by adoption. Therefore, petitioner's inability to bring this suit resulted from her own actions and not that of the Louisiana courts or legislature.

It is well established that a state has the right, under the Constitution, to enact legislation to protect the health, morals and general welfare of its citizens, which includes the right to legislate in the area of sexual conduct. See, *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283 (1964).

It is further established that the equal protection clause of the Fourteenth Amendment permits the state to classify, the only requirement being that the classification is based upon some reasonable basis. As was stated in *Morey v. Doud*, 354 U.S. 457, 463-464 77 S.Ct. 1344, 1349 (1957):

> "The rules for testing a discrimination have been summarized as follows:
>
> '1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some rea-

sonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Lindsley v. Natural Carbonis Gas Co., 220 U.S. 61, 78-79, 31 S.Ct. 337, 340, 55 L.Ed. 369."

Under the foregoing authorities, the issue before the Court is whether or not the classification into legitimates and illegitimates for purposes of the Louisiana Wrongful Death Statute has *any* reasonable basis at all or is based upon "pure prejudice" as argued by plaintiff. Plaintiff bears the burden of proving that the law does not rest upon any reasonable basis at all, and such burden is certainly not satisfied by quoting statistics showing an increase in the illegitimacy rate and by merely labelling the law as prejudicial.

That Louisiana has not engaged in any prejudicial practices against illegitimates is amply supported by the fact that it has enacted various laws designed to encourage the elevation of an illegitimate to the status of a legitimate child, such as legitima-

tion and adoption. In 1948 the legislature amended Article 198 of the Louisiana Civil Code to permit the legitimation of adulterous bastards, thus evidencing a policy geared towards bringing the illegitimate into a legitimate family relationship.

By the same token, Louisiana, as any other state has a legitimate interest in protecting the general welfare and morals of its citizens, in preserving the family unit, protecting the marital relationship and in discouraging "bringing children into the world out of wedlock." *Levy v. State,* 192 So. 2d 193 (4th Cir., 1966). In enacting such laws, the State is allowed wide discretion. As was stated in the recent case of *McLaughlin v. State of Florida,* 379 U.S. 184, 191, 85 S.Ct. 283, 288 (1964):

> "Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious."

In the case of *McGowan v. State of Maryland,* 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1105 (1961) the Court, in passing upon the constitutionality of the Maryland Sunday closing law, held that

> "Although no precise formula has been developed, the Court has held that the Four-

> teenth Amendment permits the States a wide discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds *wholly irrelevant* to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality.
>
> A statutory discrimination will not be set aside if any state of facts may be conceived to justify it." (Emphasis supplied)

In the *McGowan* case, *supra,* the Supreme Court held that

> "a legislature could reasonably find that the Sunday sale of the exempted commodities was necessary either for the health of the populace or for the enhancement of the recreational atmosphere of the day."

In the instant case, we submit that the classification into legitimates and illegitimates is reasonable in furtherance of the State's interest in promoting legitimate relationship and discouraging illegitimacy, and such classification certainly is not "wholly irrelevant" to the legislative purpose.

A system which would extinguish any classification between legitimates and illegitimates would under-

mine and endanger, if not destroy, the legal institution of marriage and the family unit, which gives moral support and stability to society in general. The principle that legislation for the protection of the family is not only reasonable, but is necessary and desirable, was forcefully stated by the U.S. Supreme Court in the case of Murphy v. Ramsey, 114 U.S. 15, 45; 5 S.Ct. 747, 764 (1885) as follows:

> "Certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, * * * than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy state of matrimony; the sure foundation of all that is stable and noble in our civilization."

It is submitted that the classification of legitimates and illegitimates, far from being arbitrary and capricious, is based upon sound public policy, namely the preservation of the integrity of and the rights flowing from legal relationships and the discouraging of promiscuity, bigamy, adultery, illegitimacy and other undesirable consequences of uncontrolled sexual conduct. If a state has the right to enact laws controlling and criminally punishing undesirable sexual conduct and laws prescribing the prerequisites of legal marriages, there should be no doubt that the state has the constitutional power to regulate what rights, if any, should flow from illegitimate relationships.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing the same properly addressed in the United States Mail with adequate postage affixed thereto.

Frank S. Normann